UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD A. CASE, Plaintiff, v. TERI HANSEN, et al., Defendants.	CASE NO. C05-2073-JCC REPORT AND RECOMMENDATION

Introduction

Plaintiff Richard A. Case proceeds *pro se* and *in forma pauperis* in this 42 U.S.C. § 1983 civil rights matter. Plaintiff alleges that his civil rights under the First, Fourth, Fifth, Sixth, and Fourteenth Amendments to the United States Constitution were violated by the conditions and procedures at the King County Department of Adult and Juvenile Detention's (DAJD) Regional Justice Center (RJC) in Kent, WA. (Dkt. 6.) He names Teri Hansen, Bob Erickson, Sue Belt, and Stephanie Murray, all current or former RJC officers responsible for plaintiff's classification, as defendants.

Defendants filed a motion for summary judgment and dismissal of plaintiff's claims. (Dkt.

22.) Because plaintiff was thrice transferred following the filing of defendants' motion and went without access or had only limited access to his legal documents for certain periods of time, the Court granted plaintiff five extensions of time to reply to this dispositive motion. (*See* Dkt. 43 (summarizing the history of this case.)) However, despite these generous extensions, plaintiff failed to submit a timely objection to defendants' motion. The Court deems plaintiff's failure to oppose to be an admission that defendants' motion has merit. *See* Local Rule 7(b)(2). At the same time, the Court takes note in this Report and Recommendation of assertions plaintiff made in an affidavit previously submitted in support of a motion for a continuance. (*See* Dkt. 39.)

Having considered the papers and pleadings submitted by the parties, as well as the balance of the record in this matter, it is recommended that defendants' motion be granted and this matter be dismissed.

Proposed Findings of Fact

Plaintiff submitted his complaint on December 14, 2005 as a pretrial detainee at the RJC. (Dkt. 1, Attach. 1.) On July 7, 2006, plaintiff was convicted and sentenced in King County Superior Court for the crime of second-degree murder. (Dkt. 22, Attach. 1.)

Upon entering the RJC as a pretrial detainee in February 2003, RJC staff designated plaintiff an "administrative segregation" and "close custody" inmate. (Dkt. 23 at 2.) An administrative segregation designation results from a determination that an inmate must be separated from other inmates for reasons including legal, behavioral, protective custody, pre- or post-disciplinary segregation, or ultra security. (*Id.* at 1-2.) RJC submits that it designated plaintiff as an administrative segregation inmate "because he had been booked on a high profile homicide investigation and had made threats towards officers while in court[.]" (*Id.* at 2.) Plaintiff

disputes the contention that he made any such threats. (*See* Dkt. 39 at 2.) A close custody designation reflects a security level generally given to inmates booked on a very serious charge, such as homicide, and/or those with a significant criminal history, usually including prison time. (Dkt. 23 at 2.) RJC initially housed plaintiff, as an administrative segregation inmate, in unit "N-East." (*Id.* at 1-2.) Plaintiff signed a behavior management contract, wherein he agreed not to threaten or harm anyone and that a violation of the contract would result in an ultra security placement. (*Id.* at 2.)

On March 14, 2003, the RJC removed plaintiff from administrative segregation status and transferred him to "D-unit." (*Id.* at 3.) On April 20, 2004, the RJC gave plaintiff the opportunity to transfer to a "medium" custody unit, but he declined, stating, according to defendants, that "he had become acclimated to the structure of D-Unit, the unit's operations, and required the privacy that the unit offered to prepare for his trial, [in which he was proceeding pro se.]" (*Id.* at 3.)[1]

On January 11, 2005, the RJC again gave plaintiff another opportunity to move to a medium custody unit, an "override" of security level for good behavior, and transferred him to "E-Unit." (*Id.* at 3.) However, on March 4, 2005, defendant Hansen, Corrections Program Supervisor at the RJC, revoked the override after plaintiff received an infraction for refusing orders to share his cell with another inmate. (*Id.* at 3.) Plaintiff maintained his right to a single cell based on his *pro se* status in his pending criminal trial, but, at the time, the RJC double bunked all medium custody units due to population needs. (*Id.* at 3.) Ultimately, following the revocation of the override, plaintiff returned to D-Unit. (*Id.*, Ex. B.)

[1] *But see infra* n. 3.

On July 27, 2005, RJC staff infracted plaintiff for possession of contraband. (*Id.* at 3 and Dkt. 24, Attach. A.) Plaintiff claimed the substance at issue was instant coffee in an altered state, but it field tested positive for methamphetamine. (*Id.*) The disciplinary hearing officer, defendant Erickson, held a hearing on July 29, 2005. (Dkt. 24 at 1 and Ex. A.) The RJC found further tests warranted and sent the substance to a lab for testing. (*Id.* at 2.) Erickson postponed any sanctions pending the test results, but nonetheless found plaintiff guilty of possessing contraband because, even if the substance was instant coffee, it would still be considered contraband by alteration because it was not recognizable as something DAJD sold or distributed. (*Id.* at 2-3 and Ex. A.) The lab results ultimately confirmed the substance was instant coffee. (Dkt. 23 at 3.) Because Erickson had by then been assigned to the King County Correctional Facility, another classification staff member sanctioned plaintiff to a loss of programming for at least thirty days. (*Id.* at 4 and Dkt. 24 at 3.)[2]

In April 2006, the RJC gave plaintiff another opportunity for an override to medium custody due to a conflict plaintiff had with another inmate in D-Unit. (*Id.*) Plaintiff declined the override and remained in D-Unit. (*Id.*)

According to defendants, plaintiff received a total of twelve infractions during his stay at the RJC. (Dkt. 23 at 3 and Ex. B.)

Proposed Conclusions of Law

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

[2] Plaintiff claims the imposition of a sixty-day sanction for this incident. (Dkt. 39 at 5.) However, any dispute over this issue is not material.

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c);*Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The moving party is entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. *Celotex*, 477 U.S. at 322-23. "[A] party opposing a properly supported motion for summary judgment may not rest upon mere allegation or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986) (citing Fed. R. Civ. P. 56(e)).

Plaintiff here pursues claims pursuant to 42 U.S.C. § 1983, which requires an allegation of the violation of a right secured by the Constitution and laws of the United States, and a showing that a person acting under color of state law committed the alleged deprivation. *West v. Atkins*, 487 U.S. 42, 48 (1988). Plaintiff argues that defendants violated his civil rights in denying him the right to free exercise of religion, denying him due process, restricting his access to the courts and to intimate familial association, and retaliating against him for the exercise of his constitutional rights. However, for the reasons described below, the Court finds defendants entitled to summary dismissal of these claims.

A. Free Exercise of Religion

Prisoners retain their First Amendment right to the free exercise of religion. *Allen v. Toombs*, 827 F.2d 563, 566 (9th Cir. 1987). However, in order to establish a violation of this right, plaintiff must show defendants "burdened the practice of his religion, by preventing him from engaging in conduct mandated by his faith, without any justification reasonably related to legitimate penological interests." *Freeman v. Arpaio*, 125 F.3d 732, 736 (9th Cir.1997) (internal

footnote omitted) (citing *Turner v. Safley* , 482 U.S. 78, 89 (1987)). In assessing the reasonableness of the challenged conduct, the Court looks to, *inter alia*, whether there is a logical connection between the regulation at issue and a legitimate government interest, whether alternative means to exercise the asserted right exist, and the impact the requested accommodation would have on prison resources. *Id*. (citing *O'Lone v. Estate of Shabazz*, 482 U.S. 342, 350-52 (1987) (citing *Turner*, 482 U.S. at 84-89.)) "In order to reach the level of a constitutional violation, the interference with one's practice of religion 'must be more than an inconvenience; the burden must be substantial and an interference with a tenet or belief that is central to religious doctrine.'" *Id*. at 737 (quoting *Graham v. C.I.R.*, 822 F.2d 844, 851 (9th Cir. 1987)).

Plaintiff alleges defendants violated his right to freely exercise his religion by not allowing him to attend religious services while in D-Unit. He notes that, while inmates may individually meet with a chaplain and that some type of other services were provided sporadically for a limited time period, there is no organized group religious service available in D-Unit.

However, plaintiff provides no evidence his faith mandates weekly attendance at group worship services. In fact, plaintiff fails to even specify his religion. Nor does plaintiff explain how the other opportunities provided D-Unit inmates for practicing their religious beliefs, including access to individual religious counseling, do not suffice to meet the mandates of his faith. *See, e.g., Zatko v. Rowland*, 835 F. Supp. 1174, 1177 (N.D. Cal. 1993) (finding legitimate penological interests for denying inmate access to group religious services and noting inmate could "worship by other means such as choosing a religious advisor from one of many denominations or possessing religious literature in his cell.") Finally, as noted by defendants, to the extent plaintiff refused overrides to medium custody units, he chose to remain in a unit with no access to group

religious services.[3] For all of these reasons, summary judgment should be granted to defendants with respect to plaintiff's free exercise of religion claim.

B. Due Process

Plaintiff appears to raise both substantive and procedural due process claims, the latter relating to his conditions of confinement and the former to both his classification as a close custody and administrative segregation inmate and to the incident in which he was found guilty of possessing contraband. As discussed below, the Court finds summary judgment warranted on these claims based on plaintiff's failure to establish any violation of his right to due process.

1. Conditions of Confinement:

Plaintiff's allegation as to unlawful conditions of confinement poses a substantive due process claim. In support of this claim, plaintiff points to the limited time allowed out of his cell per day (one hour in administrative segregation and three hours in D-Unit), being fed through a slot in the door, bright fluorescent cell lighting for some seventeen hours a day, limited access to television, limited clothing and the lack of laundry services or detergent, the small area provided for exercising and playing basketball and the few recreational options available, lack of religious services, lack of pillows and condition of bed mattresses, and the lack of microwaves, movies, and programming and training as provided in other units.

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[3] Plaintiff asserts that "[c]lassification informed [him] that his housing assignment would never change while at RJC[,] D-unit or "the hole" [(an administrative segregation unit)] were the only units available to the plaintiff." (Dkt. 6 at 7.) However, the documents cited by plaintiff in support do not bear out this contention. (*Id.*, Ex. D.) In fact, other documents attached by plaintiff to his complaint, as well as documents provided by defendants, disprove this contention by verifying plaintiff's placement in the medium security E-Unit. (*See, e.g.*, *id.*, Exs. E & I and Dkt. 23, Exs. A & B.)

The Eighth Amendment prohibits the cruel and unusual punishment of prisoners, while the punishment of pretrial detainees is prohibited by the Fourteenth Amendment. *Bell v. Wolfish*, 441 U.S. 520, 535 (1979) ("[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.") Because plaintiff was a pre-trial detainee at the time of the events at issue in this case, his substantive due process claim is reviewed under "'the more protective fourteenth amendment standard.'" *Jones v. Blanas*, 393 F.3d 918, 931 (9th Cir. 2004) (quoting *Gary H. v. Hegstrom* , 831 F.2d 1430, 1432 (9th Cir. 1987)). *But cf. Frost v. Agnos*, 152 F.3d 1124, 1130 (9th Cir. 1998) ("Because pretrial detainees' rights under the Fourteenth Amendment are comparable to prisoners' rights under the Eighth Amendment, however, we apply the same standards.")

The test for identifying unconstitutional punishment at the pretrial stage of a criminal proceeding requires a court to examine "whether there was an express intent to punish, or 'whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned [to it].'" *Demery v. Arpaio*, 378 F.3d 1020, 1028 (9th Cir. 2004) (quoting *Bell*, 441 U.S. at 538). "For a particular governmental action to constitute punishment, (1) that action must cause the detainee to suffer some harm or 'disability,' and (2) the purpose of the governmental action must be to punish the detainee." *Id.* at 1029. Further, "to constitute punishment, the harm or disability caused by the government's action must either significantly exceed, or be independent of, the inherent discomforts of confinement." *Id.* at 1030.

"[M]aintaining institutional security and preserving internal order and discipline are essential goals that may require limitation or retraction of the retained constitutional rights of both

convicted prisoners and pretrial detainees." *Bell*, 441 U.S. at 546. *Accord Jones*, 393 F.3d at 932 ("Legitimate, non-punitive government interests include ensuring a detainee's presence at trial, maintaining jail security, and effective management of a detention facility.") Moreover, corrections administrators "should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security." *Bell*, 441 U.S. at 547.

It is undisputed that both administrative segregation and the D-Unit are more restrictive than other units at the RJC. As described by defendants, plaintiff was designated an administrative segregation inmate "because he had been booked on a high profile homicide investigation and had made threats towards officers while in court[.]" (Dkt. 23 at 2.) Again, plaintiff disputes the contention that he made any such threats. (*See* Dkt. 39 at 2.) However, whether or not plaintiff made any threats, he was unquestionably subject to a homicide investigation. This fact alone supports the RJC's decision to designate plaintiff an administrative segregation and close custody inmate. (*See* Dkt. 23 at 1-2.)

Moreover, the restrictions contested by plaintiff here, including lock down for extensive time periods and in-cell meals, appear reasonably related to the legitimate purpose of maintaining security, safety, and order, and do not appear to significantly exceed the inherent discomforts of confinement. *See, e.g.*, *Frost*, 152 F.3d at 1130 (rejecting pretrial detainee's claim that he was improperly classified as a close custody inmate in light of deference to be accorded to prison officials in adopting policies and practices needed to preserve internal order, discipline, and security); *Chilcote v. Mitchell*, 166 F. Supp. 2d 1313, 1315, 1318 (D. Or. 2001) (confinement of pretrial detainees in cramped, triple-bunked cells for 20 to 21 hours a day did not rise to the level

of a constitutional violation in the face of the population-based needs and security concerns). Also, plaintiff fails to explain how the absence of group religious services, particularly given the undisputed availability of individual religious counseling, constitutes unconstitutional punishment. Plaintiff also fails to elaborate as to how the variety of other conditions challenged – from limited television access to a lack of microwaves – could be conceived as rising to the level of unconstitutional punishment. *Cf. Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982) (institution complies with the Eighth Amendment in providing sentenced prisoners with "'adequate food, clothing, shelter, sanitation, medical care, and personal safety.'") (quoted source omitted). Finally, the Court again takes note that, despite his allegation of unlawful conditions of confinement, plaintiff apparently chose to remain in the more restrictive D-Unit on more than one occasion.

In sum, plaintiff fails to proffer more than conclusory assertions that the conditions in the RJC housing units at issue constitute impermissible punishment of pretrial detainees. Accordingly, plaintiff's substantive due process claim should be dismissed.[4]

2. Classification:

The procedural guarantees of the Fourteenth Amendment's Due Process Clause apply only when a constitutionally protected liberty or property interest is at stake. *Ingraham v. Wright*, 430 U.S. 651, 672 (1977). Liberty interests protected by the Fourteenth Amendment may arise from

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[4] Plaintiff also asserts in the affidavit in support of a motion for a continuance that the "Nora-East" Unit and D-Unit are utilized to coerce inmates into guilty pleas. (*See* Dkt. 39 at 2.) To the extent this assertion implicates the validity of plaintiff's conviction or sentence, such a claim is barred by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994). Moreover, plaintiff fails to provide any support for this conclusory assertion. In fact, plaintiff did not accept a guilty plea, rather, he was found guilty at trial. (*See* Dkt. 22, Attach. 1.)

either the Due Process Clause itself or from state laws. *Meachum v. Fano*, 427 U.S. 215, 223-27 (1976). Here, without reference to any state law, plaintiff challenges his classification as an administrative segregation and close custody inmate without due process of law. However, a prisoner does not have a constitutional right to a particular classification status. *Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing *Moody v. Daggett*, 429 U.S. 78 (1976)). As such, plaintiff's claim regarding his classification necessarily fails.

3. Contraband Incident:

Plaintiff also asserts a violation of his right to procedural due process with respect to the contraband incident.[5] He claims he was found guilty without a hearing. (*See* Dkt. 6 at 10-11.)

As described above, after a positive methamphetamine result for a substance plaintiff claimed to be instant coffee, he was infracted and given a disciplinary hearing. (Dkt. 24 at 1-2.) Defendant Erickson postponed any sanction, but found plaintiff guilty of possessing contraband because, even if the substance was instant coffee, it would still be considered contraband by alteration because it was not recognizable as something DAJD sold or distributed. (*Id*. at 2-3.) When further testing confirmed the substance was instant coffee, an RJC staff member sanctioned plaintiff to a loss of programming for at least thirty days. (Dkt. 23 at 3.)[6]

Defendants argue that plaintiff is barred from pursuing this claim because he failed to exhaust his administrative remedies by filing an appeal. As stated by the Prison Litigation Reform

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[5] To the extent plaintiff intended to raise any procedural due process claims regarding other incidents during his time at the RJC, the undersigned agrees with defendants that his complaint lacks the necessary specificity for the Court to consider such claims.

[6] *See supra* n. 2.

Act (PLRA): "No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). *See also Jones v. Bock*, ___ U.S. ___, 127 S.Ct. 910, 918-19 (2007) ("There is no question that exhaustion is mandatory under the PLRA and that unexhausted claims cannot be brought in court.") The PLRA does not define "prison conditions," but the Supreme Court has held that "the PLRA's exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong." *Porter v. Nussle*, 534 U.S. 516, 532 (2002).

Defendant Erickson asserts that, after he informed plaintiff of his finding, plaintiff expressly declined to file an appeal: "I informed Mr. Case that I found him guilty of the infraction and proceeded to ask him whether he wanted to appeal the finding. He abruptly responded, "Fuck No, I am going to sue all of you." (Dkt. 24 at 3.) Plaintiff denies making such a statement, but does not assert or otherwise support a contention that he did exhaust his administrative remedies. (*See* Dkt. 39 at 3-5.) Because it appears plaintiff failed to exhaust his administrative remedies, this claim should be dismissed.

Moreover, even if plaintiff had exhausted his administrative remedies, he fails to establish any violation of his procedural due process rights with respect to this incident. In *Wolff v. McDonnell*, 418 U.S. 539, 563-69 (1974), the United States Supreme Court outlined the minimum procedures required in the face of disciplinary charges. The Court found that due process requires, *inter alia*, a written statement – addressing the charges, a description of the evidence, and an explanation for the action taken – at least twenty-four hours prior to the disciplinary

hearing, that written record be made of the proceedings, and the opportunity to present documentary evidence and call witnesses, unless such an allowance would interfere with institutional security. *Id. See also Mitchell v. Dupnik,* 75 F.3d 517 523-26 (9th Cir. 1996) (describing applicability of *Wolff* to pretrial detainees).

Plaintiff fails to allege any facts supporting the contention that the procedures outlined in *Wolff* were not met in this case. In fact, documents submitted by defendants demonstrate that plaintiff received a copy of the infraction on July 27, 2005, had a hearing on July 29, 2005 of which a written record was made, and did not request any witnesses. [7] (*See* Dkt. 24, Ex. A. ("Inmate Infraction Report Disciplinary[/] Hearing", "Rule Infraction Report", and "Disciplinary Check List & Statement" signed by plaintiff.)) Accordingly, this claim may also be properly dismissed on the merits.[8]

C. Access to Courts

In his complaint, plaintiff states that "[t]he restrictions inherent to administrative segregation has negatively impacted [his] access to the courts[,]" and that "[t]he disciplinary actions imposed by the defendants have adversely affected [his] trial preparation, as pro se." (Dkt. 6 at 12.) He also makes reference to an incident in which his legal materials were seized from his cell. (*Id*. at 9.) In the affidavit in support of a motion for a continuance, plaintiff points to the difficulty he encountered in gaining recognition as a *pro se* litigant, asserts defendant Hansen's

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[7] Plaintiff's assertion that inmates are not allowed or are otherwise prevented from obtaining witnesses (*see* Dkt. 39 at 6) is no more than conclusory.

[8] Having found plaintiff failed to exhaust his administrative remedies and is otherwise entitled to no relief with respect to this claim, the Court declines to reach defendants' additional argument that plaintiff lacks standing to bring this claim.

interference with his access to the courts, including matters relating to the boxes in which he kept his legal materials, and maintains that court documents would clearly show the effects defendants' actions had on his trial preparation and outcome. (Dkt. 39 at 6.)

While inmates have a constitutional right of access to the courts, *Bounds v. Smith*, 430 U.S. 817, 821 (1977), they must show actual injury in order to pursue an access to courts claim, *Lewis v. Casey*, 518 U.S. 343, 351 (1996). An inmate must demonstrate that alleged shortcomings in the prison's legal access scheme hindered, or were hindering, his ability to pursue a non-frivolous legal claim, *see Lewis*, 518 U.S. at 354-55, and/or provide specific examples in which he "'was actually denied access to the courts[,]'" *Allen v. Sakai*, 48 F.3d 1082, 1090 (9th Cir.1994) (quoted source omitted). Also, delays in providing legal materials or assistance that result in actual injury are "not of constitutional significance" if "they are the product of prison regulations reasonably related to legitimate penological interests[.]" *Lewis*, 518 U.S. at 362.

In this case, plaintiff fails to satisfy the Court that he suffered any actual, concrete injury to his right of access. Instead, his claims are wholly conclusory. Even with respect to the more specifically described issues, including the seizure of his legal materials, plaintiff points to no actual resulting injury. Accordingly, because plaintiff fails to adequately allege a cause of action for deprivation of his right of access to the courts, defendants are entitled to summary dismissal of this claim.[9]

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[9] Having found plaintiff failed to demonstrate actual injury, the Court declines to reach defendants' additional argument that res judicata bars plaintiff from litigating the removal of his legal materials.

D. Familial Association

The Ninth Circuit describes the right to intimate association as follows:

> During the period of confinement in prison, the right of intimate association, a fundamental element of personal liberty, is necessarily abridged. Intimate association protects the kinds of relationships that attend the creation and sustenance of a family-marriage, childbirth, the raising and education of children, and cohabitation with one's relatives. The loss of the right to intimate association is simply part and parcel of being imprisoned for conviction of a crime.
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> Many aspects of marriage that make it a basic civil right, such as cohabitation, sexual intercourse, and the bearing and rearing of children, are superseded by the fact of confinement. Thus, while the basic right to marry survives imprisonment, most of the *attributes* of marriage – cohabitation, physical intimacy, and bearing and raising children – do not.

Gerber v. Hickman, 291 F.3d 617, 620-21 (9th Cir. 2002) (internal citations, quotation marks, brackets, and ellipses omitted).

In this case, plaintiff alleges that "[t]he restrictions inherent to administrative segregation has negatively impacted [his] ... right to intimate famalial (sic) association." (Dkt. 6 at 12.) However, plaintiff does not indicate *how* this right has been violated. Instead, he merely makes the above-stated conclusory allegation. Accordingly, summary judgment should be granted with respect to plaintiff's intimate association claim.

E. Retaliation

Plaintiff alleges defendants retaliated against him in response to his grievances, attack on the seizure of his legal material, and challenges to disciplinary measures imposed. Defendants dispute that plaintiff was ever classified, housed, or disciplined as a result of retaliation.

Plaintiff has a First Amendment right to utilize prison grievance procedures. *See Bradley v. Hall*, 64 F.3d 1276, 1279 (9th Cir. 1995). To prevail on a retaliation claim under § 1983,

however, plaintiff must show he was retaliated against for exercising his constitutional rights, that the retaliatory action chilled the exercise of his First Amendment rights, and that the retaliatory action did not advance legitimate penological goals, such as preserving institutional order and discipline. *Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005); *Resnick v. Hayes*, 213 F.3d 443, 449 (9th Cir. 2000); *Barnett v. Centoni*. 31 F.3d 813, 816 (9th Cir. 1994). Also, the Court evaluates a retaliation claim in light of the deference accorded prison officials. *Pratt v. Rowland*, 65 F.3d 802, 807 (9th Cir. 1995).

In this case, plaintiff's allegation of retaliation is generalized and conclusory. He fails to show that any actions taken by defendants did not advance legitimate penological goals, such as preserving institutional order and discipline. *See Pratt*, 65 F.3d at 806 ("The plaintiff bears the burden of pleading and proving the absence of legitimate correctional goals for the conduct of which he complains.") Nor does plaintiff show that his First Amendment rights were in any way chilled by the actions of defendants. *See Resnick*, 213 F.3d at 449. As such, plaintiff's retaliation claim should be dismissed.

Conclusion

For the foregoing reasons, this Court recommends that defendants' motion for summary judgment be GRANTED, and this matter be DISMISSED with prejudice. A proposed order accompanies this Report and Recommendation.

DATED this 30th day of March, 2007.

Mary Alice Theiler
United States Magistrate Judge